

Final Scope of Study for Supplemental Environmental Impact Statement  
for the Proposed  
Northwoods Single Family Residential Subdivision

Property Located at Roll Road and Greiner Road  
Town of Clarence, Erie County, New York

Cimato Bros. Construction, Inc., Petitioner

Updated as per April 4<sup>th</sup> 2011 Planning Board meeting minutes

This Draft Scope has been prepared in accordance with Article 8 of the Environmental Conservation Law (State Environmental quality Review Act), and the SEQR regulations contained at 6 NYCRR Part 617 of the implementing regulations.

This document will guide the content of the Draft Environmental Impact Statement (DEIS) which must be prepared pursuant to the adoption of a Positive Declaration of Environmental Significance by the Clarence Town Board on November 16, 2011. The scope is based on the Environmental Assessment Form prepared for the proposed project, the Positive Declaration of Environmental Significance dated January 24, 2012, the comments received during various public meetings with the Clarence Planning Board, and in accordance with 6 NYCRR 617.8(f) of SEQR.

**I. Description of the Proposed Action**

The proposed Northwoods project is comprised of a 148± lot single family residential subdivision on a 118.91± acre parcel of land in the Town of Clarence, New York.

The subdivision is proposed as an Open Space Design Development (OSDD) pursuant to the Town's zoning law. For purposes of OSDD the applicable zoning law is modified to provide an alternative permitted method for the layout, configuration and design of lots.

The Northwoods Subdivision is designed to provide access from Roll Road and Greiner Road as well as a connection to an existing stub street known as County Club Drive. This will allow direct access to Shimerville Road as well.

The project is a Type I Action under SEQRA.

## **II. Potentially Significant Environmental Impacts:**

This section identifies the existing environmental conditions that may be adversely or beneficially impacted by the subject action, including those impacts cited as reasons for issuance of a positive declaration. Areas so identified are as follows:

- A. Water Resources
  - 1. Ground Water – impact of proposed development on water table
  - 2. Surface Water – impact of additional storm water discharges and capacity of existing/proposed facilities to handle them; runoff from roadways; increased potential for flooding, change in existing drainage patterns. This section should also address any potential impacts to Gott Creek, a class C(T) regulated stream that crosses the southwest corner of the site.
  - 3. Wetlands – impact of proposed development on existing state and federal wetlands on site; impact on adjacent areas (using NYSDEC wetland definition)
- B. Agricultural Resources – Impact to land historically used for agriculture
- C. Historic and Archaeological Resources
  - 1. Impact of proposed development on cultural or archaeological resources
- D. Aesthetic Resources – Impact of proposed development on loss of open space
- E. Transportation – impact on existing roadway system adjacent to project area and in surrounding area, including nearby intersections, and proposed future intersections; impact on travel time and safety
- F. Growth and Character of Community or Neighborhood
  - 1. Impact and relation to site having been identified as a priority area for the Purchase Development Rights within the Open Space Inventory and Town Master Plan
  - 2. Impact on capacity to existing sewer system and need for creation or expansion of a sewer district.
  - 3. Impact on school system

- G. Cumulative Impacts – Impact of proposed development should be considered in combination with the full build-out of approved developments in the surrounding area to include Waterford Village (Roll Road) and Spaulding Green (Greiner/Goodrich Road).
- H. Other Sections – Impact of proposed development should include a consideration of the growth of impacts, conservation of energy resources, and irretrievable resources.

### **III. Required Information for Assessing Impacts**

#### **A. Water Resources**

1. Ground Water – Describe groundwater conditions based on descriptions provided in the Erie County Soil Survey and subsurface explorations.
2. Surface Water – Describe surface water conditions based on site inspections and a preliminary drainage study to be completed by Passero Associates. Compare pre and post development surface water conditions based on a preliminary drainage study. The study should determine the volume and rate of storm water discharges for each condition, and compare same to the capacity of existing drainage facilities to handle existing and projected flows. Append the preliminary drainage study which evaluates and compares the pre and post developed condition of the site.
3. Wetlands – Describe the existing extent, character, and jurisdictional oversight authority of wetlands within the site bounds based on delineations completed by Wilson Environmental Technologies, Inc. (WET), The New York State Department of Environmental Conservation (DEC), and the United States Army Corps of Engineers, where applicable. Describe regulatory involvement to date, with respect to acceptability of delineations, and isolated waters issues from the federal perspective. Append the Wetland Delineation Report of Wilson Environmental Technologies, Inc. This section should also describe the functions and benefits of the wetland present on the project site.

- B. Agricultural Resources – Describe and provide history of site as it relates to agricultural production. Discuss whether other agricultural opportunities exist in the community and extent same may mitigate the loss of this particular agricultural use.
- C. Cultural Resources – Describe the historic occupation of the site including impact on archaeological resources as detailed in Cultural Resource surveys prepared by Commonwealth Cultural Resource Group, Inc. (CCRG). Include cultural/archaeological information from the New York State Department of

Parks Recreation and Historic Preservation (NYSOPRHP). Append previously prepared Cultural Resource Surveys by CCRG (Phase I). Further describe Phase II recommendations and analyses as required by the NYSOPRHP and the U.S. Army Corps of Engineers.

- D. Aesthetic Resources – Discuss existing land use and zoning, including a discussion of the existing neighborhood and the adjoining subdivisions. Relevant references from, and compatibility with, the Town Master Plan should also be included, as well as references from the existing Town of Clarence Code and Zoning Map. Describe buffering/screening techniques between proposed and existing land uses. Discuss the loss of open space. Provide an analysis of how views of the site will change including the provision of sight line diagrams or other visual simulations depicting site entry points particularly from Greiner Road and Country Club Drive.
- E. Transportation – a Traffic Impact Study (TIS) should be prepared which should compare pre and post development levels of traffic through the study area. Sources of traffic should be identified and quantified (e.g., existing traffic, background traffic, normal system wide growth and site generated traffic). The TIS should analyze and consider any recent traffic studies previously prepared by the Town of Clarence. Existing intersections to be studied for level of service analysis should include:

1. Shimerville Road and Greiner Road
2. Shimerville Road and Roll Road
3. Thompson Road and Greiner Road
4. Thompson Road and Roll Road

The study should also include future project intersections on the existing street network at:

1. Greiner Road
2. Roll Road
3. Country Club Drive

Accident histories should be included for a three-year period within the study area. The TIS should be appended.

- F. Growth and Character of Community/Neighborhood – Describe the demographics of the vicinity and the resources provided by the community (e.g., police and fire protection, schools, recreation opportunities). A projection of number of new public school system students should be provided.

Compare the pre and post development condition of sanitary sewer and water facilities to determine:

1. Whether sufficient capacity exists to serve the demand placed on the systems by the proposed development. Append the Engineers Report.
2. Analyze various options regarding the creation or extension of a sewer district to service the project area, including the creation or extension of a Town or County District, as well as a private sewage works corporation.
3. Analysis should include consideration for current sanitary sewer capacity and consideration of the Town's sewer prioritization schedule.
4. Analysis should include a detailed assessment of the "Reserve Capacity" under the 2001 Sewage Works Construction and Operation Agreement. This assessment should include:
  - The total number of Equivalent Dwelling Units (EDU's) utilized to date.
    - The total number of EDU's currently committed to future development.
    - The number of EDU's that need to be held in reserve for future development that is part of past agreements (for example, the "commercial portion" of Waterford Village).

The Heise-Brookhaven Sewage Works Corporation and the Clarence Town Engineer should both sign off on this analysis.

5. This section should also address any impact to the public water supply source and whether this area is in a permitted water district.

#### **IV. Mitigation Measures to Minimize Environmental Impacts:**

Describe measures to reduce or avoid potential adverse impacts identified in Section II. Anticipated areas of particular concern include the following:

##### **A. Water Resources**

1. Ground Water – Analyze impact of liquid effluent on surface groundwater. Clear definitions of impacts and mitigations and the terms used should be documented. The section should also examine mitigation of project impacts associated with the high water table.
2. Surface Water – Make recommendation as to appropriate methods of storm water management which could be implemented in conjunction with site improvements to mitigate for the increased

amount of storm water which is expected to result from site development. Append the preliminary drainage study to be completed by Passero Associates which will contain recommendations and conclusions.

3. Wetlands – Describe the extent, character of potential wetland mitigation, from the perspective of both federal and state regulatory agencies. Mitigation plans prepared by WET should be included and appended, if applicable. In addition to anticipated wetland impacts and associated mitigation, this section should also describe avoidance and minimization of wetland and adjacent area impacts. A conceptual wetland mitigation plan must also be included with the draft SEIS.
- B. Agricultural Resources – The DEIS should discuss and consider potential mitigation of loss of agricultural land.
- C. Historic and Archaeological Resources – CCRG will, through coordination with the U.S. Army Corps and NYSOPRHP, conduct a Phase II analysis of the site in order to obtain detailed information on the integrity, limits, structure, function and cultural/historic context so as to evaluate its potential for National Registry of Historic Preservation.
- D. Aesthetic Resources – Discuss appropriate mitigation measures to lessen the impact of loss of open space vista. These mitigation measures could include buffers, landscaping, berms and presentation of open space areas.
- E. Transportation – Describe potential traffic impact mitigation measures (e.g., traffic control signage, signalization, etc). Responsible entities for the requirement of mitigation measures should be identified (i.e., background traffic, normal system growth, or site generated traffic). An anticipated schedule of recommended improvements should be provided when applicable.
- F. Growth and Character of Community of Neighborhood – Discuss mitigation measures previously employed and to be employed regarding creation of sewer infrastructure sufficient to adequately serve the proposed subdivision. Also discuss possible phasing of the development as it relates to the introduction of new students into the school district.

**V. Alternatives:**

Discussion should be at a level sufficient to permit a comparative assessment of impacts for each alternative. Alternatives to be discussed are to include:

1. Development as allowed “by right” under existing land use classification
2. Alternative location
3. The subject action (preferred alternative)
4. The null/no build alternative

This section should also include a discussion of alternative designs meant to explore off-site and on-site avoidance and minimization of wetland impacts. This would include alternative locations for the proposed project and alternative designs and layouts of the subdivision at the proposed site.

**VI. Appendices:**

Existing and proposed studies completed for the environmental analysis are to be reproduced in their entirety as appendices to the DEIS. They may include: the previously prepared EAF (parts 1, 2 and 3), Traffic Impact Study, Cultural Resource Surveys, Preliminary Engineer’s Report (containing preliminary drainage study, downstream sanitary sewer analysis, and water supply evaluation), Wetland Delineation Study, Flora and Fauna Inventories, Fiscal Analysis, etc. Relevant correspondence between the project sponsor, involved SEQR agencies and the public shall also be appended.

The Wetland Mitigation Plan should also be included as an appendix to the SEIS.

**VII. Issues of Proposed Development Determined to be Not Significant**

using theoretical approaches or research methods generally accepted in the scientific community.

*Local Waterfront Revitalization Program and State Coastal Management Policy Consistency*

**41. What must be discussed in an EIS about consistency with state coastal management policies and local waterfront development programs approved under Article 42 of the Executive Law?**

If a state agency is involved in an action for which an EIS will be prepared and the proposed action will occur within the New York State coastal area along the Great Lakes or the Atlantic Ocean and its estuaries as defined in Article 42 of the Executive Law, it is required that the EIS contain a discussion of the effects of the proposed action on and its consistency with, applicable state coastal management policies. This provision does not apply within those portions of the New York State coastal area where local waterfront revitalization programs have been approved because a comparable discussion of the effects of the proposed action on applicable policies of the local revitalization program must be provided instead [see 617.14(f)(1)].

**42. Must coastal/LWRP policies be considered only when a state agency is lead agency?**

No. If a state agency is an involved agency and a local agency is serving as lead agency, it will still be necessary to comply with the consistency review requirements of Article 42 and incorporate such material into the EIS.

**43. Must local agencies address coastal program consistency in an EIS if no state agencies are involved in the action?**

No. There is no requirement for local governments to address coastal program consistency under Article 42 unless a state agency is involved in the overall action. However, if the local government has an approved local waterfront revitalization program, it has an obligation to discuss the relationship of the proposed action to such program as part of its description of the overall action in the EIS. Further discussion of

SEQR and Coastal Consistency may be found in Section 8-C, page 112.

*Appendices and Listings of Supplemental Documentation*

**44. What appendices and supplemental documentation should be included in a draft EIS?**

The following are typically included as appendices to the draft EIS:

- list of studies, reports and information considered and relied on in preparing the statement;
- list of all federal, state, regional, or local agencies, organizations, consultants and private persons consulted in preparing the statement;
- technical exhibits;
- relevant correspondence regarding the projects.

**45. Must lengthy technical exhibits be included in every copy of the draft EIS?**

When long or graphically elaborate technical exhibits must be made public, it is not necessary that they be distributed to every party requesting a copy of the draft EIS. Summaries of such technical exhibits should be included in all copies of the draft EIS. Sufficient copies of the detailed exhibit, as a separate document, should be provided to the involved agencies and made available in public locations, such as local libraries.

## D. REVIEW OF DRAFT EIS's

*Completeness and Adequacy for Review*

**1. Who determines the completeness and adequacy of a draft EIS for public review?**

The decision whether a draft EIS is complete and adequate for public review and comment is made by the lead agency.

**2. Is there a particular basis for determining the adequacy of a draft EIS?**

Yes. The lead agency should rely on the written scope of issues, if one was prepared, and the



standards in 617.14 which cover the content of EIS's. The lead agency should ensure that all relevant information has been presented and analyzed, but should not require an unreasonably exhaustive or "perfect" document. The degree of detail should reflect the complexity of the action and the magnitude and importance of likely impacts.

A draft impact statement should describe the action, alternatives to the action and various means of mitigating impacts of the action. It should discuss all significant environmental issues related to the action, but it is not the document in which all such issues must be resolved. Resolution of issues before acceptance of a draft EIS, in fact, defeats one of the major purposes of a draft EIS; that is, to give the public an opportunity to comment on the various alternatives regarding the action, so that such comments may be part of the final decision making considerations.

### **3. What happens if the lead agency finds the draft EIS inadequate for public review?**

If the submitted draft EIS is determined to be inadequate for public review and comment, the lead agency must identify, in writing, the deficiencies and provide this information to the project sponsor.

### **4. Is there a time frame for determining the completeness and adequacy of a draft EIS submitted by an applicant?**

Yes. The lead agency has thirty days to determine completeness and adequacy of a draft EIS for public review, or to specify the reasons for its unacceptability. In the case of complex EIS's, the lead agency can notify the applicant, in writing, within the first 30 days that an additional thirty days is needed. However, the adequacy of the draft EIS must be determined within 60 days.

### **5. If a draft EIS is found deficient, may it be resubmitted and if so, how soon?**

Yes. Just as with the initial draft EIS, there is no time frame for the project sponsor to make revisions to remedy the deficiencies in the first

version of the draft EIS. Such deficiencies could be resolved in a matter of hours or could require several months.

### **6. When a revised draft EIS is submitted, what time frames apply to its acceptance?**

The lead agency will have thirty days to review the resubmitted draft EIS. It is possible that the revised draft EIS may still be found inadequate by the lead agency.

### **7. Is there a limit on the number of times a lead agency may reject a submitted draft EIS?**

The SEQR regulations place no limit on rejection of a draft EIS, except that the lead agency must identify the deficiencies in writing to the project sponsor. If a lead agency's request for the inclusion of necessary information is ignored or refused, the agency may continue to reject the document.

However, the lead agency should remember that a draft EIS does not need to be perfect. It should contain a discussion of information, including significant impacts, alternatives and mitigation measures requested by the lead agency in a reasonable level of detail. The purpose of the public comment period is to allow all involved agencies and the public to review the draft EIS and comment on its inadequacies. These can usually be corrected in a final EIS.

If there is a fundamental disagreement between the lead agency and the preparer of the draft EIS about its acceptability, it is possible to simply disclose that disagreement in the document itself and explain how the parties vary in their opinions. The public will then be able to comment on this as well.

### **8. Can an involved agency participate in the determination of the adequacy of a draft EIS?**

Only the lead agency may decide upon the adequacy of a draft EIS. The lead agency may consult with other involved or interested agencies regarding questions about their interests or about items they have requested during the scoping of the EIS.

**9. Must differences in interpretation between the project sponsor and lead agency experts regarding a technical issue be resolved before determining a draft EIS as complete?**

No. It is not necessary to resolve these types of disputes before accepting the draft EIS as complete. In cases where there are valid differences in the interpretation of a technical issue, the lead agency should include both interpretations in the draft EIS. Providing both positions allows a reviewer to reach an independent determination regarding the impact.

*Public Review*

**10. Once the lead agency accepts a draft EIS for public review, how is the public informed?**

When the lead agency accepts a draft EIS, it must prepare and file a notice of completion consistent with 617.10(c) [see model form at 617.21(G)] and make copies of the EIS available as described in 617.10(d). Both the Notice of Completion and a copy of the draft EIS are filed with the Commissioner of DEC for the statewide SEQR repository, with the appropriate DEC regional office, with the involved agencies and with the chief executive of the political subdivision in which the action is principally located. If the action involves a project sponsor, it also must receive a copy of the completion notice. Copies of the draft EIS should be provided to all persons requesting a copy, but they may be charged a fee by the lead agency to cover copying costs.

A notice of completion is published in the statewide "Environmental Notice Bulletin" ("ENB") upon its receipt by the Commissioner of DEC. It is strongly suggested (but not mandated) that a lead agency also provide some form of notice of availability of the draft EIS at local level, through use of local publications and agency bulletin boards.

**11. How many copies of a draft EIS must be provided?**

A project sponsor is required to provide sufficient copies of the draft EIS to meet the filing requirements of 617.10(d). Those interested

agencies, organizations and individuals requesting copies prior to lead agency acceptance of the draft EIS should be included in this initial count. Added to such figure should be an estimate of the number of copies which will be needed to satisfy requests made by the public, once a notice of completion of the draft EIS is released.

If the draft EIS is complex or voluminous, it may not be reasonable to make copies available to all persons requesting it. In addition, certain supplemental information such as large maps, statistical data and technical reports may be impractical to reproduce in quantity. Part 617 provides that where sufficient copies of a draft EIS are not available to meet public interest, the lead agency may provide additional copies to the local public libraries. Such copies should include all supplemental information. A copy of all documents should also be available for public review in the office of the lead agency.

**12. How long is the public review period for a draft EIS?**

The minimum period is thirty days, beginning from the Notice of Completion. If the document is lengthy or there is a delay in its distribution or there is substantial public interest, the lead agency should expand the review time. The time allowed for draft EIS review may be considerably longer than the minimum, depending on whether public hearings are held, how long they last and whether the lead agency desires to extend the comment period. If a hearing is held, the review period must remain open for 10 days following the close of the hearing for the receipt of written public comments.

**13. Is it appropriate for an involved agency to comment during the public review period?**

Yes. If an involved agency has participated in scoping a draft EIS, it is advisable for the agency to comment on the draft EIS during the public review period so that its concerns will be officially recognized and responded to in the final EIS. This is important, because it establishes a basis for the involved agency's findings.

#### 14. How can one effectively comment on a draft EIS?

Commenting on the draft EIS is a valuable way for agencies and the public to have direct input into the decision making process. Public input is particularly helpful in determining whether the impacts on community services and human resources have been adequately addressed.

The following criteria should be followed by anyone making comments:

- Focus on major issues, not on problems with wording or minor discrepancies.
- If oral comments are made at a hearing, back them up with written comments covering at least the main points made at the hearing. (At least ten days must be allowed after the close of a hearing for comments, no matter how long the time period has been before and during the hearing.)
- Give careful attention to the comparative assessment of alternatives presented in the draft EIS.
- Offer reasonable alternatives and suggest measures to reduce adverse environmental effects.

In addition, agencies should primarily focus their comments on topics which relate to their functions or expertise.

#### 15. May individuals comment on a draft EIS after the close of the official comment period?

Yes, but such comments do not require a response by the lead agency in the final EIS, even if substantive. It would be pointless to comment belatedly, if similar comments have already been expressed by others. However, if such comments include new concerns of significant adverse environmental effects not covered in the draft EIS or in timely comments by others, the lead agency may choose to consider them in the final EIS.

### E. SEQR HEARINGS

#### 1. Must a hearing be held on a draft EIS?

No. Hearings are optional. The decision to hold a hearing is up to the lead agency. Frequently, other laws related to decisions on the action—a local rezoning or subdivision plat approval, for example—may require a public hearing be held. SEQR regulations encourage combining such a hearing with a SEQR hearing if time frames permit.

#### 2. When are hearings held during the EIS process?

Hearings are held after the notice of completion of a draft EIS, during the public comment period. A minimum of fourteen days notice is required prior to the hearing.

#### 3. If an agency complies with the "open meetings" law during its consideration of an action under SEQR, isn't this a hearing?

No. The Open Meetings Law provides for public attendance and observation of a board's deliberations, but makes no provision for public comments.

#### 4. Is a SEQR hearing required for a Type I action?

No. Even when a draft EIS has been prepared for a Type I action, it is still the option of the lead agency whether a hearing will be held.

#### 5. How should an agency determine whether to hold a SEQR hearing on a draft EIS?

Subdivision 617.8(d) provides that in determining whether or not to hold a SEQR hearing, the lead agency shall consider:

- The degree of interest in the action shown by the public or involved agencies;
- Whether substantive or significant environmental issues have been raised;
- The adequacy of the mitigation measures proposed;
- The extent of alternatives considered; and

- The degree to which a public hearing can aid the agency decision making process by providing an efficient mechanism for the collection of public comments.

Other factors which should be considered by the lead agency in deciding to hold a hearing are:

- The opportunity for broadest public disclosure.
- The need for important and informative comment by certain interest groups, technical specialists, or community representatives.
- The opportunity for a project sponsor to briefly discuss the project and draft EIS.

## 6. What type of hearing is required under SEQR?

The type of public hearing to be held is discretionary. The hearing may be as formal or informal as deemed necessary by the lead agency. In most cases, an informal (legislative) hearing is held. This involves unsworn statements and submission of written comments with informal record-keeping and chairing of the hearing. A formal (adjudicatory) procedure involving rules of evidence, sworn testimony, cross examination, and a stenographic record may be held where agency procedures so require. Whenever possible, SEQR hearings should be incorporated into an agency's existing hearing procedures.

## 7. What is the status of comments made at a SEQR hearing on a draft EIS?

Substantive comments received at a SEQR hearing become part of the official record. They must be responded to by the lead agency in the final EIS and thus may affect agency findings and decisions on a project. If a stenographic record of the hearing is made, its summary may become part of the final EIS.

## 8. Is there a relationship between the review period and the hearings held on a draft EIS?

Yes. The review period begins at the time of filing of the draft EIS and must be at least 30 days long. However, if a hearing is held, the review period must remain open at least 10 days after the close of the hearing to receive additional written comments.

## 9. May a SEQR hearing be held on a final EIS?

There is no provision in Part 617 for hearings on final EIS's. The relationship between draft and final EIS's is such that a hearing on a final EIS would likely be redundant.

## 10. Can involved agencies hold a SEQR hearing if the lead agency chooses not to?

No. The lead agency has the sole responsibility for determining the need for a SEQR hearing on a draft EIS.

## 11. What are the notice requirements for a SEQR hearing?

When an agency determines that a public hearing is necessary, it is required to file a notice of such hearing with various parties and publish the notice in one local newspaper of general circulation at least 14 days before commencement of the hearing. The hearing notice must contain:

- the time and place of the hearing
- purpose of the hearing
- a summary of the notice of completion of the draft EIS

Since the hearing notice contains a summary of the notice of completion of the draft EIS and must be circulated to the same parties as the notice of completion, it is desirable to combine the two notices when possible (see 617.21, Appendix G).

## 12. How can a SEQR hearing be made more effective?

In order to organize effective hearings, it is strongly suggested that prior to the hearing, the lead agency, applicant, other involved agencies and interested parties meet to resolve the following:

- identification of the participants and their role(s) in the hearing;
- hearing schedule (dates, times, places, order of issues);
- specific environmental issues to be discussed; and
- the extent of presentation by project sponsor.

## F. FINAL EIS's

### 1. What is a final EIS (FEIS)?

A final EIS consists of:

- the draft EIS;
- copies or a summary of substantive comments received, indicating their source (correspondence, hearing, etc.);
- the lead agency's responses to substantive comments; and
- revisions to the draft EIS.

### 2. Must the final EIS restate the draft EIS?

To simplify the final EIS, the lead agency may incorporate the draft EIS by reference. The final EIS should include any necessary changes or additions to the draft EIS, with the reasons for these changes, copies or a summary of the substantive comments received and their source, and all responses to the substantive comments.

### 3. Should the full hearing record on the draft EIS be included in the final EIS?

No. The hearing record should be referenced in the final EIS and made available for public review along with any other reference material.

### 4. Who receives the final EIS?

The final EIS should be sent to all involved agencies, and to everyone who received a copy of the draft EIS. If the final EIS is lengthy or the number of documents available is limited, the lead agency may provide notice to all non-involved agency recipients of the draft EIS to solicit their interest in receiving a copy of the final EIS and provide copies for review in the local library(ies).

### 5. Must all comments raised in the review of the draft EIS, either in writing or at public hearings, be answered, and if so, in any particular manner?

Only substantive comments need to be answered; general objections need no response. The comments can be grouped by topic so that responses in the final EIS are not repetitive.

Comments do not need to be responded to individually or in order of their receipt.

### 6. Who decides what comments are "substantive," requiring response in the final EIS?

The lead agency decides which comments on a draft EIS must be responded to in the final EIS.

### 7. How does the lead agency decide which comments are substantive?

Whether comments are considered substantive will depend on the relevance of the comments to identified impacts, alternatives, mitigation or the importance of new environmental issues not previously addressed. Comments are not always "substantive" in the sense that they deal with significant impacts; often there is need to explain why an impact is not significant or why a particular topic is not covered or, more specifically, how an alternative or special mitigation will work. Clarification of scientific terms, concepts or data interpretation may also be necessary in a final EIS. If a subject has been raised frequently, but is not an important environmental issue, it may be wise to address it at least briefly. Speculative comments and assertions that are not supported need no response. Minor discrepancies in wording and typographical errors should be corrected, but need not be responded to as substantive.

### 8. What if there are no substantive issues raised during the public review period?

The lead agency should briefly acknowledge in the final EIS the comments that were received and account for any minor revisions made to the draft EIS, as it is incorporated into the final. The final EIS should then be ready for acceptance.

### 9. Who is responsible for the preparation of the final EIS?

The lead agency is responsible for the adequacy and accuracy of the EIS. A project sponsor may be requested to respond to substantive comments to a draft EIS. However, final acceptability is the responsibility of the lead agency. Other involved agencies may be consulted by the lead!

agency, and outside consultants may be utilized both by the project sponsor and lead agency, but this in no way reduces the responsibility of the lead agency for the final product. The lead agency may revise any responses offered by the project sponsor.

## 10. Are there times when a draft EIS is produced but no FEIS is required?

Yes, under two circumstances. First, if the lead agency determines, on the basis of the draft EIS and public comment period, that the proposed action will not have a significant effect on the environment, a negative declaration may be prepared and filed in lieu of a final EIS. However, in most cases it is better to proceed to a final EIS in order to preserve the integrity of the record. Second, if after preparing a draft EIS a project sponsor withdraws its application, no final EIS should be prepared.

## 11. How soon after acceptance of a draft EIS must a final EIS be accepted and filed?

If a hearing has been held on the draft EIS, the lead agency has 45 calendar days from close of the hearing record to file its accepted final EIS. If no hearing is held, the lead agency must file the final EIS within 60 days of the filing of the draft EIS. The filing of a final EIS may be extended, if more time is needed to adequately prepare it or if it is necessary to materially reconsider or modify the impact statement because review of the draft has revealed additional problems with the proposed action.

Under certain circumstances, the issues raised may be of such significance that a supplemental EIS is required. Since the final EIS must then address the questions and issues raised regarding both the original and supplemental draft EIS's, time frames for filing of a final EIS would not apply until the draft supplemental EIS was filed or a hearing, if any, was held on it (see also Section 5-E, SEQR Hearings, page 72, Section 6-A, SEQR Time Frames, page 88 and Section 5-G, Supplemental EIS's, page 75).

## 12. Is a SEQR hearing held on a final EIS?

No. The regulations do not provide for a hearing on final EIS's.

## 13. Is there a comment period for final EIS's?

No. After filing of a final EIS, the lead and all other involved agencies must wait at least ten days before making their findings and a final decision on the action. This period is not a comment period, but allows time for the involved agencies to consider the final EIS. However, concerned parties may comment in writing to the lead agency on the final EIS. The lead agency has no obligation to respond to comments on a final EIS.

## 14. Why comment on a final EIS?

It may be important for interested parties and agencies to clarify points made earlier that have not been satisfactorily responded to in the final EIS. This information may influence the lead agency (or in some cases other involved agencies) in making findings and taking final action.

## 15. Is a final EIS the last step in the SEQR EIS process?

No. The preparation of findings by the lead agency and each involved agency at the time they make their decisions regarding the proposed action, is the final step in SEQR and occurs after the final EIS has been accepted (see also Section 5-I, page 81).

## G. SUPPLEMENTAL EIS's

### 1. What is a supplemental EIS?

A supplemental EIS provides an analysis of significant adverse environment effects not addressed or inadequately addressed in draft or final EIS's. A supplemental EIS also may be required to analyze the site-specific effects of an action previously discussed in a generic EIS. The scope of the supplemental EIS should be limited to an assessment of the significant adverse impacts of the changes or new information identified.

## **2. When is a supplemental EIS needed?**

A supplemental EIS may be needed in the following circumstances:

- project changes are proposed which may result in one or more significant adverse environmental effects;
- newly discovered information arises about significant adverse effects which was not previously addressed;
- a change in circumstances arises which may result in a significant adverse environmental effect; or
- site-specific or project-specific analysis of potential significant adverse environmental impact(s) is needed for actions following a generic EIS.

## **3. At what point in the SEQR process should a supplemental EIS be required?**

The need for a supplemental EIS may become apparent after the acceptance of the draft EIS and up to the time that agency findings statements are filed following acceptance of the final EIS. A supplement may also be prepared if project modifications having significant adverse impacts occur after findings have been made which require further agency decision.

For generic EIS's, supplements after findings are more common. Inherent in the concept of generic EIS's is the potential need for future site-specific or project-specific analysis once certain choices have been made, based on the generic EIS and findings.

## **4. Are there criteria for determining if newly discovered information may warrant preparation of a Supplemental EIS?**

Yes. The lead agency must consider:

- the importance and relevance of the information;
- its probable accuracy; and
- the present state of the information provided in the original EIS to be certain the subject has not already been covered in sufficient detail.

An EAF may be used to evaluate the need for a Supplemental EIS.

## **5. May a supplemental EIS be required by an agency other than the original lead agency?**

One of the other involved agencies cannot force the preparation of a supplemental EIS as long as the original lead agency retains decision-making power. This would extend through the filing of a findings statement and final decision by the lead agency.

After a findings statement and final decision has been made by the lead agency, any project modification not covered in the EIS, which may have environmental significance may be subject to either a supplemental EIS or a new EIS on the modification. The original lead agency may continue in its role if it is still called upon to make a decision or alternatively another involved agency which must approve the modification may become lead.

In the case of generic EIS's, it may be agreed beforehand that another involved agency will conduct a site-specific SEQR analysis, once the original lead agency has made certain choices based on its generic EIS findings. An example of this latter situation would be the preparation of a generic EIS for a countywide solid waste management plan, from which the county-level lead agency picks a specific incinerator site, which then must be evaluated under a project-specific EIS with a state regulatory agency as lead agency.

## **6. What happens if you find that a final EIS needs to be supplemented?**

A supplemental EIS is subject to the same acceptance and review procedures as other EIS's. The supplemental EIS must consist of both a draft supplemental EIS and final supplemental EIS.

## **7. Who is responsible for preparing a supplemental EIS?**

Supplemental EIS's are usually prepared by the project sponsor.

## **8. What is the review process for a supplemental EIS?**

When a supplemental EIS is required after a